



# Trade Groups Want Say In EPA Pesticide Suit

By Jesse Greenspan

Law360, New York (March 21, 2011) -- Five pesticide trade groups moved to intervene Friday in a California lawsuit accusing the U.S. Environmental Protection Agency of failing to consult with federal wildlife agencies about the effects of pesticides on 214 endangered and threatened species.

Crop Life America, Responsible Industry for a Sound Environment, the Southern Crop Production Association, the Western Plant Health Association and the Mid America CropLife Association lodged their motion to intervene in the U.S. District Court for the Northern District of California.

"Every product challenged by plaintiffs has been found by EPA, after a rigorous evaluation process, to 'perform its intended function without unreasonable adverse effects on the environment,'" the trade groups said.

"Moreover, these products play a fundamental role in assuring a safe and affordable food supply for all Americans, are essential to controlling such public health pests as mosquitoes and rodents, and support agricultural exports that are central to our nation's economic well-being," they said.

The relief sought by the two environmental group plaintiffs would require the court to supervise tens of thousands of EPA judgments and oversee the agency's entire pesticide registration program, while serving only to drain EPA resources and render its regulatory efforts less effective, according to the trade groups.

The groups said they would suffer substantial harm if settlement negotiations were allowed to proceed without their participation.

The case itself — purportedly the most comprehensive legal action ever brought under the Endangered Species Act to protect imperiled species from pesticides — was filed on Jan. 20 by the Center for Biological Diversity and Pesticide Action Network North America.

The case alleges that the EPA never consulted with the U.S. Fish and Wildlife Service or the National Marine Fisheries Service about the vast majority of pesticides, even though pesticides are known to be harmful to more than 200 endangered and threatened species, including the Florida panther, California condor, piping plover, black-footed ferret and arroyo toad.

Over 1 billion pounds of pesticides are used each year in the U.S. to control weeds, insects and other living organisms, and the EPA has registered more than 18,000 pesticides, according to the complaint.

There is widespread and pervasive pesticide contamination in groundwater, drinking water and wildlife habitats throughout the country, according to the suit, and many EPA-approved pesticides are linked to cancer and other health effects in humans.

"Even tadpoles collected from high in the Sierra Nevada in areas with no direct pesticide use contain pesticide residues in their systems," the suit said.

The complaint listed hundreds of chemical groups and the species that may be affected by each chemical group. It also cited numerous examples of times the EPA and other federal agencies found that a particular pesticide impacted a listed species.

"For decades, the EPA has turned a blind eye to the disastrous effects pesticides can have on some of America's rarest species," Jeff Miller, a conservation advocate with the Center for Biological Diversity, said in January. "This lawsuit is intended to force the EPA to follow the law and ensure that harmful chemicals are not sprayed in endangered species habitats."

Earlier in March, the EPA and the two environmental groups were granted a 90-day stay in order to explore the possibility of a settlement.

The environmental group plaintiffs are represented by Justin Augustine, Jaclyn Lopez and Collette L. Adkins Giese of the Center for Biological Diversity and by Michael W. Graf.

The pesticide trade groups are represented by William K. Rawson, Claudia M. O'Brien, Stacey L. VanBelleghem and Patrick J. Ferguson of Latham & Watkins LLP and David B. Weinberg and Eric Andreas of Wiley Rein LLP.

The case is Center for Biological Diversity et al. v. U.S. Environmental Protection Agency et al., case number 3:11-cv-00293, in the U.S. District Court for the Northern District of California.

--Editing by John Williams.